Supreme Court, U.S.
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In The Supreme Court of the United States

ROSE MARIE S. SPANAGEL,
individually and as personal representative
of the Estate of Robert J. Spanagel,

Petitioners,

v.

SUPPORTIVE CARE SERVICE, INC.,

Respondent.

On Petition for Writ of Certiorari
to the Delaware Supreme Court

PETITION FOR WRIT OF CERTIORARI

Rose Marie S. Spanagel
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Cambridge, MD 21613
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Pro se

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QUESTION PRESENTED FOR REVIEW

Did the Supreme Court of the State of Delaware commit reversible error when it affirmed the Delaware Court of Chancery's entry of a default judgment against Petitioner, when Respondent's attorney later admits that he committed a fraud on the Court when he certified that he had personally served Petitioners a copy of the Complaint according to Court rules and now admits to perjury?

LIST OF PARTIES TO PROCEEDINGS BELOW

The parties to the proceedings before the Delaware Supreme Court are the following:

Rose Marie S. Spanagel – Defendant – Appellant
Robert J. Spanagel – Defendant – Appellant
*Deceased

Support Care Service, Inc.,
Guardian July 7, 1995 to March 12, 1996.
Aline G. Brugmann
**Deceased

John H. Williams, Jr. – Plaintiff – Appellee
Not legal entity to this proceeding.
Illegal appointment made by Register of Wills, March 7, 1997. VOID.

* February 2, 2001
** March 12, 1996

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OPINIONS BELOW

The order 12-7-01 of the Supreme Court for the State of Delaware dismissing the Petitioners' appeal is not reported, but is set forth in the Appendix beginning at A-1. The order 11-7-01 of the Delaware Supreme Court denying the Petitioners' motion for rehearing en Banc is not reported, but is set forth in the Appendix beginning at A-3. The order of the Court of Chancery, filed March 4, 1996, is not reported, but is set forth in the Appendix beginning at A-14. The order of the Court of Chancery for the State of Delaware, filed April 19, 1999 is not reported, but is set forth in the Appendix beginning at A-9. The order of the Court of Chancery for the State of Delaware filed April 27, 1999, is not reported, but is set forth in Appendix beginning at A- .

STATEMENT OF JURISDICTION

The order of the Delaware Supreme Court dismissing the Petitioners' appeal was entered November 7, 2001. The order of the Delaware Supreme Court denying the Petitioners' motion for rehearing en Banc entered December 7, 2001 (A-3). This Court has jurisdiction to review the order of the Court of Appeals by writ of certiorari under 28 U.S.C. Section 1257 (a).

CONSTITIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1257(a) provides as follows:

> (a) This case does include final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question, or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

This petition concerns fraud on the court, and fraud in the court by no less than six attorneys, Joseph F. Flickinger III, Register of Wills, and Jack B. Jacobs, Vice Chancellor, both acting under color. This case was preceded by two separate law suits filed by Forward Manor against Robert J. and Rose Marie Spanagel in 1985. Mr. Spanagel requested their resident, Aline G. Brugmann's medical records July, August, September and October 1994, to transfer her from Delaware to Maryland to be close to our home. Because they did not cooperate, his request was made the next year March, April and May, 1995, Forward Manor responded by filing two lawsuits. One in Chancery Court, another in Superior Court the same time. In 1900, 1920, 1943, three babies were born. Sadly, the first two have died (Aline & Bob) since this case was filed, August 18, 1995. The first Chancery Court case, presided by Vice Chancellor, Jack B. Jacobs, resulted in the appointment of Supportive Care Services, Inc., as Guardian July 7, 1995, regardless of the eight mistakes; including hearing a petition with only one physician statement. Their Ward died March 12, 1996, age 95, and their authority was terminated. There never was a legitimate party, appointed under law, as successor plaintiff. Petitioners attorneys fawned the court rather than Motion the court that Register of Wills Joseph F. Flickinger III straw man appointment of John H. Williams, Jr. was void. The plot was no mistake. Case CA No. 14488, has been crawling through the Court of Chancery, Delaware's non-jury trial court of equity, all these years and plundered our house and personal property therein, because Vice Chancellor Jack B. Jacobs refused to open the default judgment after he signed an "Order to Show Cause" March 4, 1986, changed to a "default judgment". We were told

by our first lawyer, Richard S. Phillips the court lacked jurisdiction and proper service. Attempts to have the default lifted by our fifth lawyer were met with an Order from Vice Chancellor Jacobs threatening sanctions with an award of counsel fees to the plaintiff. All efforts failed to have the case judged on its merits, so we appealed to the Delaware Supreme Court October 31, 2000. Since appeal was denied a "Motion For Rehearing *En Banc*" was filed November 26, 2001; also denied.

The "Order To Show Cause" signed by Vice Chancellor Jacobs December 22, 1995 relied on statements made by David Ferry's letter dated December 21, 1995, (Docket #10, Clocked 4:09 p.m., 12-21-95). In David Ferry's Supreme Court Appellee's Answering Brief, August 13, 2001, page 19 B., he finally confesses service was not properly perfected under 10 Del. C. 3104. To secure his precarious default judgment, plaintiffs' attorney, David J. Ferry, Jr., provided the court with a sworn AFFIDAVIT, September 16, 1999, stating the facts set forth in his December 21, 1995 letter to Vice Chancellor Jack B. Jacobs, are true and correct. The AFFIDAVIT was perjured, and now David Ferry admits to his perjury. The petitioner alerted Vice Chancellor Jacobs to Ferry's misrepresentations by letter December 14, 1995, (Docket #9) and subsequent letter dated January 17, 1996, (Docket #13). Petitioner also advised the court in the last letter my husband was legally blind from post-operative eye infections and provided medical documentation. Due to his blind condition, he was not capable of handling his personal affairs and incompetent to deal with this litigation. Vice Chancellor Jacobs and the attorneys ignored this completely. Petitioner's husband, Robert J. Spanagel, died February 2, 2001, age 80 and held a Durable

Power of Attorney from his life long friend, Mrs. Brugmann. They met the year he was born, and there was no interruption in their concern or caring for each other until death separated them. Mrs. Brugmann would never file a claim like this. *It was filed by her Guardian who never knew her at the time an epidemic of lawsuits concerning the elderly were popular, corresponding to the epidemic of law suits in California concerning child care organizations.* David J. Ferry, Jr., attorney for the plaintiff, has distorted the record, falsified information, misrepresented and committed perjury. Vice Chancellor Jacobs' opinions have supported his perjury throughout, and wrongfully engaged in conspiracy undermining the court records spoiling supportive documentation necessary for defense.

When we were represented by counsel, there were three occasions when the Plaintiffs and Defendants lawyers (*on the same days using the exact same methods*) filed via fax, U.S. mail, and hand delivered records to the Register in Chancery. The plaintiff's records were docketed; the defendant's records were not, and went missing. Collusion on the court, and in the court with the willful destruction of our supportive court records subverted any possibility of justice. Initially, we were without representation, due to my husband's hospitalization August, September and October, 1995, and post-operative infection resulting in blindness. Documents supportive to our side, provided by our lawyers, were not docketed, and now absent from the record, along with many documents filed *pro se*.

Aline and Bob's relation was more than substantial. In his 12-20-99 court testimony, he commented that he received more letters from Aline during the war than his own mother and

wife combined, *yet court opinions state "his relationship is questionable and insubstantial".* Aline's was a young girl when her Father died in the hen house and her Mother was killed in an auto accident. She was cared for by my husband's grandparents, and his Mother (Frances Margaret Jones Spanagel) and Aline grew up as sisters.

Around 1964, Aline and Elmer Brugmann bought their first and only house, *3403 Rockfield Drive, South, Devon, Wilmington, DE* , the same house this litigation concerns. For more than 20 years, her husband did the household chores, including cooking and chauffeuring so Aline could teach children piano at home. Aline's was devastated when illness struck her husband, not only from witnessing the way Elmer was restrained to the bed by the hospital and nursing home, but, she could no longer earn income at $9 to $11 per lesson, from her piano students. She was supported by Mr. and Mrs. Robert J. Spanagel, Elmer's niece and her husband from Virginia Beach, (Bette and Col. "Slim" Collings) and a nephew in Louisiana.

After her husband's death (May 22, 1986) she quickly explored with various professionals some way to prevent her admission to a nursing home. She wanted to stay in her house, teach children, and needed help to do this. Her life long friend, Bob Spanagel, supported her house/care plan, and in return was given "Durable Power of Attorney" June 6, 1986. This verbal agreement was put in writing Thanksgiving, 1987. Her signature was witnessed by her doctor; but, the court rejected this since Bob was not in the room when Aline signed it; therefore, the courts opinion was, *"he did not witness her signature, and the document was not proved."*

Prior to her signing the deed when she sold her house for $125,000 to us June 18, 1987, she visited with no less than 4 attorneys, *yet Vice Chancellor Jacobs' many opinions state "she was without representation at the sale".* Her personal attorney, Darrell J. Baker, and attorneys Timothy Collins, Sherryl Rush-Milstead, and Henry A. Heiman were present, with two witnesses; William Frampton and Orysia K. Meyers. Aline knew Mr. Heiman years before, from teaching his daughter piano. In addition to the legal professionals, she sought advice from her medical professionals before and after she signed the deed; *yet the continued court opinions state "she had no counsel, was not paid fair consideration, and Bob transferred the house to us illegally.*

After her husband died, Aline continued to enjoy the security of her former house, with all her needs met pursuant to her 1986 verbal agreement until 1991, when she wanted to move to an assisted living apartment at Forward Manor. She could meet the physical requirements for admission, but, not the financial requirements of $150,000, due to insufficient funds. At her request, Mr. Spanagel, prepared a balloon financial report to get her over the hump, and she signed herself in. The inflated figures were $71,000 under their column "Notes Due You" and $450 in Monthly Income Real Estate. The rest of the numbers he ball parked to show $152,000 total assets and $1,560 total monthly income. Forward Manor's Admissions Director, Mary Denney did not question the numbers, and wrote on the application, "Applicant will use up funds in 4 years". She moved into her new apartment April, 17, 1991, *yet the court opinions state "the Spanagels put her in a nursing home, and commenced to rent her house".* Our house was empty and undergoing repairs and renovations, per Aline and

Bob's agreement The house was never rented until after Mrs. Brugmann died 1996. If Bob Spanagel was the person of character Plaintiff wanted the court to believe he could have sold our house after she moved out in April 1991 and gone back on his word of promise to her.

In July 1994, Mr. Spanagel asked Forward Manor for Aline's records so she could be transferred to Maryland. Another request was made in writing August 19, 1994 and included comment, "funds are running low." No acknowledgment was made of this or another letter he sent to Gail Derdorf, office manager, Forward Manor, September 7, 1994. On another visit, October 1994, Mary Denny, admissions director, Forward Manor told Bob she felt Aline would not live through the weekend, and confirmed by the doctor. Arrangements to transfer Mrs. Brugmann were canceled when the house was listed For Sale October 1994. Transfer plans were reactivated 1995 with medical records requested again in writing March 13, 1995 sent via fax, and again in person March 14, 1995. This time the request was met with hostility from Russell A. Di Gilio, Executive Director, Forward Manor, who concluded, "this would not be resolved unless we contact our lawyer". Two more faxes were sent to Russell Di Gilio May 10 and May 11, 1995. Then a personal visit to Forward Manor May 12, 1995 at 7:45 p.m. to pick up the records from the R. N. on duty as Mr. Spanagel was advised to do. No records were provided. The final letter asked for all records up to and including May 15, and was delivered to Forward Manor May 13, 1995. Forward Manor responded by filing *two lawsuits* against Robert J. and Rose Marie Spanagel filed as: *1) A Petition for Guardianship CM 7533 in Chancery Court and 2) Civil Action No. 95C-05-102 filed in Superior Court.*

On June 26, 1995, Mrs. Brugmann's niece, Bette Collings, Virginia Beach, VA, received a certified letter informing her the court had scheduled a hearing June 30, 1995. Unfortunately, Bette's reply letter was addressed, *"Jack B. Jacobs"*, and the salutation read, *"Dear Mr. Jacobs";* therefore, no consideration was made whatsoever to her desires. The court received her letter June 29, 1995, clocked 12:20, Docket #7. On short notice, and without counsel, Mr. and Mrs. Spanagel appeared pro se, hopeful the court could help obtain Mrs. Brugmann's medical records; however, Supportive Care Services was appointed Guardian.

On July 7, 1995, the court ordered SCS to provide an accounting within 30 days, *yet many times the court opinion states, " the Spanagels refused to obey a court order that directed them to provide an accounting".* We had no knowledge of this order, because the court never mailed it to us, nor were we the one directed to provide the accounting. The order directed the Court Appointed Guardian, SCS, to provide the accounting within 30 days from the order's date. (July 7, 1995) Supportive Care Services did not write to us until July 27, 1995 (twenty days after the signed order) and never specified a deadline. Their July 25, 1995 letter merely stated, "soon as possible". On August 18, 1995, SCS initiated this litigation and changed the situation.

Now, the other case Forward Manor filed in Superior Court through their attorney, Helen Richards, came to our attention. We hired Darrell J. Baker, Esquire, by telephone July 24, 1995, seeking representation. Mr. Baker said that as Mrs. Brugmann's attorney in the past, there may be conflict. He agreed to represent us only in Superior Court since we were in

New York because my husband's son, was scheduled for open-heart surgery July 25, 1995 at Crouse-Irving Hospital, Syracuse, NY. Mr. Baker filed a counter-claim answer August 4, 1995 for Superior Court CA No. 95C-05-102. Judge William Quillen dismissed the case since Forward Manor failed to prosecute.

On August 23, 1995, settlement was scheduled for the house in Wilmington. The Spanagels could not be in Wilmington since Rose Marie Spanagel was admitted that day to the Emergency Department, Dorchester General Hospital, Cambridge, MD. August 24, 1995, Robert J. Spanagel was at Johns Hopkins Hospital, Baltimore, MD, with Dr. Patrick Walsh. On August 25, 1995, Mr. Spanagel was admitted to the Emergency Department, Dorchester General Hospital for gross hemituria. He was hospitalized through August 27, 1995, subsequently transferred to Johns Hopkins with September surgery and discharged October 3, 1995. The summons for this Chancery Court litigation was returned to David Ferry four days before we got home. He never did a second mailing, choosing instead to write misleading letters to Vice Chancellor Jacobs seeking a default judgment. Many of his letters stated; *"the Spanagels were served with the complaint and service was made under 10 Del.C. 3104 ."* Because this was not true, Petitioner wrote V. C. Jacobs, December 14, 1995, Docket #9 and again January 17, 1996, Docket #13 alerting him of this and our health problems David Ferry knew about from Darrell Baker. Petitioners January 17, 1996 letter put the court on notice of my husband's post operative eye infections causing blindness and provided medical documentation. Mr. Spanagel was legally blind and incapable of attending to his personal business and incompetent in every respect. The information was in the record for anyone to see; however, all five attorneys we

hired for our defense in Chancery Court remained silent. David Ferry wrote the Delaware Supreme Court, *" this is an insult to every person who is blind."* The default was decided without regard to a blind incompetent person. Vice Chancellor Jacobs, signed the "Order To Show Cause", a default judgment, (Docket #17 clocked 11:56 AM, March 4, 1996) without the benefit of the complete file, and relying on his memory 46 days before that was the last activity on this case. (January 17, 1996, Docket #13).

On Friday afternoon, March 1, 1996, David Ferry quickly wrote a letter to Vice Chancellor Jacobs after he learned our first lawyer, Dick Phillips was answering the complaint. Many mistakes were made in this hasty letter. There was no "Motion" included, yet the *"Order to Show Cause* states; having considered the plaintiffs Motion." Vice Chancellor Jacobs violated his own policy signing this order by not first forwarding it to the defendants. It was a default judgment mislabeled, as "Order to Show Cause" due to Ferry's urgency.

Without question, David Ferry committed a fraud on the court when he wrote, *"It is clear the Spanagels have no intention of answering this complaint."* This was no mistake. He already knew our lawyer would be filing the answer Monday, March 4, 1996. Petitioner did not receive a copy of the complaint until February 12, 1996; 179 days after it was filed. No summons was included since the courier was not court appointed. Friday, March 1, 1996 we met with our first attorney, Richard S. Phillips, and gave him a $2,000 retainer. Mr. Phillips told us, *"the complaint was not filed timely, and lacked jurisdiction; but, might as well go answer it, because*

the Plaintiff could re-file through Publication, and get it right the second time".

In Petitioners presence, he placed a call to plaintiff's attorney, David J. Ferry, Jr., and told him, " I represent the Spanagels, and I'm filing an answer on Monday, March 4, 1996." Mr. Phillips told us to stop by his office Monday morning to pick up the paperwork then file it with the court, and buy copies of the complete court records and docket for his use. As we passed the receptionist after our meeting, a call came in from David Ferry for Dick Philips.- In court Monday afternoon, March 4, 1996, the last entry was Docket #13, our January 17, 1996 letter to Vice Chancellor Jacobs. The Register in Chancery, Priscilla B. Rakestraw, had the file and docket sheets duplicated for us, and since nothing further was received by the court since my January 17, 1996 letter, Docket #13, I was informed the answer I filed would be Docket #14.

Ken Lagowski, Office Manager, and the Register in Chancery, Priscilla B. Rakestraw made a thorough effort on the afternoon of March 4, 1996, to insure I had copies of the complete record by checking with every employee to see if they were holding any documents for CA 14488 and be certain the complete file was duplicated. Petitioner even asked if someone was still out to lunch, and had documents on their desk. Her reply was, "not a chance." But, our next visit to the court showed the record now reveals, unbeknownst to the Register and Office Manager, someone clocked an "Order to Show Cause" 11:56 a.m., March 4, 1996; yet this Order to Show Cause could not be found anywhere in the Register's office, and no one employed there had any knowledge how it could have been clocked in at 11:56 a.m. March 4, 1996. It was

assigned Docket #17, proof that it was not in the court when I filed our "Answer" at 1:17 PM, Docket #15, March 4, 1996.

An understanding of Docket #17 is important as it is the default judgment. The clocking machines used by the Chancery Court at that time, are described as follows: 1) All the clocks in use, had manual dials so date and time could be changed as required. Some were also placed in unsecured locations. Anybody (authorized or unauthorized) having knowledge, could adjust the dials and get whatever reading they wanted. Therefore, whatever date is stamped on Docket #17 (3/4/96 11:56 a.m.) the "default judgment mislabeled Order to Show Cause", as well as Ferry's letter clocked in after hours, and lacking a "Motion" (Docket #14 3/1/96 4:33 PM) are fraudulent. Even the court clerk lists Docket #17 as an "Order to Show Cause" on their Docket Sheet. There is no beginning of certainty, clarification, opinion or any other judicial writing establishing how or why the court could have ruled the default. Notification was never made by the court to the defendant, nor did the court offer a hearing on the "Motion for Default Judgment" because there was no Motion to offer a hearing on. It didn't exist with the March 1, 1996 letter. It was not attached to David Ferry's rushed letter dated March 1, 1996.

Complicating matters further, the elected official; The Register in Chancery, could not protect and preserve the public's interest. There were too many ways someone could circumvent the only authority the citizens of Delaware have empowered by their vote, or a non-resident could be guaranteed that was fair and unbiased, when forced to participate in litigation. When Vice Chancellor Jacobs' signed an "Order to Show Cause", with the affirmation; "having carefully

considered the Plaintiff's Motion for a default judgment" on March 4, 1996, he should have known the March 1, 1996 letter in front of him was deficient. There was no Motion attached. Because of health problems, we were *pro se* August 18, 1995, the date the complaint was filed, until March 1, 1996, when we hired our first attorney. Unfortunately, our attorney, Dick Phillips and plaintiff's attorney, David Ferry both came to the court with "dirty hands". Regrettably, I did not learn this until after my husband's death. The petitioners chronic frustrations to be heard on this fraud in the court was made more difficult by Register of Wills Joseph F. Flickinger III, acting under color, who opened an estate with a photocopy of a will, not proved; and codicil lacking date for witness signatures, also not proved. The Register of Wills never held a hearing to establish a valid legal appointment for successor plaintiff, nor did Vice Chancellor Jacobs hold a hearing to approve the Register's straw man appointee. It was a plot promulgated by past bias, prejudice and disrespect of the law. Notices were never made since hearings were never held. Mr. Flickinger's appointment of John H. Williams, Jr. always was and remains void. Vice Chancellor Jacobs, under color, did not and could not sign a Motion for Substitution filed April 16, 1997, extremely out-of-time more than 365 days after death, because it would be illegitimate and unlawful. The Court Appointed Guardian Supportive Care Service's authority was terminated March 12, 1996, including the lawsuit CA 14488 filed August 18, 1995,

and default judgment made March 4, 1996. No legal authority was established thereafter because my husband's petition for representation, as specified in Mrs. Brugmann's will, was arbitrarily dismissed. The lawyers hired by Robert J. and Rose Marie Spanagel did not protect their interest.

Mr. Spanagel had profound sensorineural hearing loss with poor speech discrimination at his December 20, 1999 testimony, documented in the transcript. Everyone in the court was aware of the problem with the chronic whistle of his aids and their removal. An easy target for abuse, he was not offered or provided help in direct violation of the American with Disabilities Act. The court never wanted to hear from the petitioner, who could hear and rebut the mistakes in the record from the beginning of this prolonged court case.

The same judicial discretion that prevented the Petitioners from testifying at the March 26, 1999 hearing, also prevented the Petitioners from entering the accounting at the hearing on August 20, 1998, that lasted almost two hours, while Petitioners were told to wait outside the court room. We brought to the court two large boxes of accounting records, and the new accounting format lawyers required us to use just days before the hearing. Petitioners devoted more than 100 hours to reformat. Not one of the lawyers looked at the new accounting, and we were refused entry to the court room. We were told that we should be glad the Vice Chancellor didn't want to see us. The accounting was available at the beginning in a "tablet format", 1995, 1996, 1997 and 1988. The new format was specifically required for the hearing on August 20, 1998 and after all the work, no body was interested in it. For the March 26, 1999 hearing, it was reformatted once again, but not entered in the record. By preventing Mr. Spanagel's testimony until December 20, 1999, when the accounting went through its 4th reformat to Microsoft Excel, the court had the opportunity to plunder our house and personal property therein. Petitioners first lawyer, Dick Phillips, was hired because the petitioner was

the only one who received 5 photocopies of the complaint February 12, 1996. Vice Chancellor Jacobs' opinions state: *"the defendants were served with the complaint, and service perfected under 10 Del. C 3104."* This is simply not true. Not until August 13, 2001, was it admitted in David Ferry's Answering Brief, Delaware Supreme Court, Case No.523,2000,Page19 B, MERITS OF THE ARGUMENT that *"Service was not properly perfected under 10 Del. C. 3104"*.

We were forced to participate because lawyers appeared in court with dirty hands and refused to put on their "belt of truth" doing the business of the court. Even today, March 2002, The Honorable Court exists as defined by the word, "prestigious" in Webster's New World Dictionary "full of deceitful tricks, delusion, 1.[Archaic] characterized by legerdemain or deception" Duplicity is egregious throughout the record with the date documents are clocked "Received.... ". The Chancery Court still uses several clocks with manual dials. Because this sitution revolves around who controls the high ground, controls the situation, I pray morals and ethics will be supreme in deciding this case. Last year, Delaware's legislature made changes; Delaware, the only state in the nation where the voters do not have the right to vote on constitutional amendments, now presented the judiciary with power to eliminate the people's elected representative, The Register in Chancery. The position is filled through appointment by the judiciary . . . perhaps, appropriate for the "Blue Hen State" to have the fox guard the hen house.

ARGUMENT

A. Scope and Standard of Review

The standard and scope of review in the present case, is whether the Fourteenth Amendment allows a trial court and the Delaware Supreme Court to turn its back on attorney misconduct and reward such misconduct with the enforcement of a void default judgment entered against Petitioners because of a fraudulent assertion by Respondent's attorney that personal service had been made upon Petitioners, according to trial court rules. See R."Roy" Peralta v. Heights Medical Center, Inc., 485 U.S. 80 (1988) This fraudulent assertion was later admitted in Respondent's Answering Brief filed with the Supreme Court for the State of Delaware . Ironically, no where in its opinion does the Delaware Supreme Court address the service issue or fraud upon the Court.

To make matters worse, Respondent's attorney was representing a non entity during the enforcement of this default judgment, as no Order was entered for substitution of parties after Respondent's death. See Ex Parte La Prade, 289 U.S. 444 (1933); William Kasting v. American Family Mutual Insurance Company, et al., 196 F.R.D. 595 (2000) . Respondent's attorney had no jurisdiction to substitute a new Respondent as a party or to continue a law suit against Petitioners. Without question, Petitioners were unjustly denied a hearing on the issue of a liability. Consequently, all of the actions regarding the enforcement of the default judgment were void.

State procedures for enforcing judgments and liens are always subject to the strictures of due process. See supra, R."Roy" Peralta v. Heights Medical Center, Inc., 485 U.S. 80 . A fundamental requirement in any proceeding is notice reasonably calculated to interested parties and an opportunity to present objections. See Id. B. MERITS

Fraudulent conduct on the part of Respondent's attorney should not be tolerated by any Court. See G. Russell Chambers v. Nasco, Inc., 501 U. S. 32 (1991). The minimum sanction for fraud on the Court should be the reversal of the entry of the default judgment in the present case. However, not only did the Delaware Supreme Court refuse to address Respondent's fraudulent assertions of personal service, it condoned such action with the entry and affirmation of the default judgment. Even the Delaware Supreme Court permitted a violation of the Rule 8.4 of Professional Rules of Conduct which specifically provides that : It is professional misconduct for a lawyer to ...engage in conduct involving dishonesty, fraud, deceit or misrepresentation ..... "Mr. Ferry sign an affidavit swearing that he had served the Petitioners according to the Court rules, only to later admit that he lied and did not follow Court rules in an answering brief to the Supreme Court. However, this admission has come too late, two lives have been literally destroyed by this unlawful conduct on the part of Mr. Ferry.

Petitioners Spanagels never had an opportunity for a hearing before the Court seeking relief from default. Under the trial court's interpretation of the service and default statutes,

Petitioners Spanagels aver that they have been denied due process of law under the Fourteenth Amendment to the

United States Constitution because Petitioner was not afforded actual notice and an opportunity to be heard when respondent took their house and worldly possessions. The Supreme Court has held that "Failure to give notice violates 'the most rudimentary demands of due process of law." See R."Roy" Peralta v. Heights Medical Center, Inc., 485 U.S. 80 (1988) (citations omitted). In Peralta, despite a return showing "personal service," the defendant denied he had ever been personally served. This Court held that the default judgment against him could not stand because "[A] judgment entered without notice or service is constitutionally infirm." Id.

In the present case, the Court's own evidence in the record demonstrates that the certified mail envelope containing the complaint was never received by the Spanagels (no signed return receipt) or delivered to the address on file with the Court. When Respondent's attorney acted upon the default judgment the Court he knew that the envelope containing the complaint had never been delivered to Petitioners. When the default decision was made, there was no real proof of service by personal service or by registered or certified mail as required by the trial court rules.

The answering brief filed by respondent's attorney in the Delaware Supreme Court admits that Petitioners Spanagels were never personally served, and neither Mr. or Mrs. Spanagel nor any one else signed for a copy of the complaint. Due process under the Fourteenth Amendment of the United States Constitution therefore required that the court below set aside the Default Decision of the Court of Chancery for failure to effect service upon petitioners Spanagels which was reasonably calculated to apprise them of the proceedings at which their property may be taken.

Mullane v. Central Hanover Bank, 330 U.S. 306 (1950) has long stood for the proposition that a person's property may not be taken without due process and that a fundamental requisite of such process is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of proceedings which could result in a deprivation of property so as to afford them an opportunity to be heard. Mullane further held that "when notice is a person's due, process which is a mere gesture is not due process." Id. at 315. In the case at bar, respondent's attorney knew that the envelope giving Complaint was not claimed by the Spanagels, and that the petitioners did not receive it according to Court rules. Therefore, the notice given in this case was such a "mere gesture", and not done according to the rules. Additionally, the "mere jester" was kept under cover, until Respondent's admission of deceit after the Spanagel's property had been wrongfully taken away. A "mere jester" cost Mr. Spanagel his life, and lead his wife into a life of poverty and depression.

In Sinclair and Valentine Co. v. County of LA, 201 Cal. App. 3d 1021 (1988), a California Court of Appeal found such a "mere gesture" under Mullane where the County of Los Angeles mailed a notice of sale at public auction ". . . with full knowledge that such notice would be undeliverable as addressed." In this case, when the envelope was addressed to the wrong place, respondent's attorney similarly had full knowledge that notice had never been given to petitioners Spanagels. To sustain a default judgment taking away the house of Petitioners and their savings when Respondent's attorney knew that its Complaint had never reached the Spanagels is the paradigm violation of Mullane principles.

Under the Due Process Clause of the Fourteenth Amendment, notice means "actual notice," not notice mailed but undelivered. In Tulsa Professional Collection Services v. Pope, 485 U.S. 478 (1988), this Court held that, even in complex probate matters, ". . . requirement of actual notice to known or reasonably ascertainable creditors is not so cumbersome as to unduly hinder the dispatch with which probate proceedings are conducted."

Petitioners Spanagels asserts that the Court's entry of a default decision violated due process when the Court acted on a certified mail receipt which conclusively demonstrated that the Complaint had been mailed to the wrong address and that the Spanagels did not receive the Complaint.

In Wise v. Herzog, 114 F.2d 486 (D.C. Cir. 1940), the Court has held that due process is not satisfied, even though a statute and court rule permitted service by registered mail, when the receipts were returned "unclaimed" or "refused."

Mullane is the cornerstone of due process in the United States. This Court should grant certiorari so that its important teachings are not willfully ignored by the Court of Chancery and the Delaware Supreme Court as they have done in the present case. Even though there was an admission of fraud, nether Court sought further evidence or requested a hearing to determine the extent of the misrepresentations. To the contrary, the Courts used any excuse they could find to uphold the default judgment. It would have been politically unpopular to do otherwise, and give the Spanagels a fair hearing on the issue of liability.

Furthermore, not even taking into account the equities of the present case, Appellant Spanagel asserts that the Court never had jurisdiction over her or Robert J. Spanagel. Because the Defendants are not residents of the state of Delaware, Plaintiff was required to use a form of substitute service upon Defendants. Plaintiffs then attempted to do so under the statutory authority of 10 Del. C. §3104. However, Plaintiff failed in its attempt in that it registered mail serviced or sent to the wrong address.

The Delaware Supreme Court has noted the safeguards embodied in the statute for the protection of non-resident defendants and support the doctrine that although the non-resident defendant statute is procedural in form, it is to be regarded as a statute affecting substantive light. See Monacelli v. Grimes, Del. Supr., 99 A.2d 255, 266 (1953). However, these safeguards were abandoned when it came to the Spanagels.

A judgment is void if entered after improper service of process. Both the Court of Chancery and the Delaware Supreme Court knew that the judgment was void, but abandoned justice for the politically correct thing. They would take pride in prosecuting the Spanagels in a civil court where application of rules was a rare event and make the Spanagels another example in a time period where other persons thought to have taken advantage of elderly people were made spectacles of.

"The failure to follow this procedure justifies dismissal. Purnell v. Dodman, Del. Super., 297 A.2d 391 (1972)." Caffon v. Matt Slap Subaru, Inc., Del. Super. 1998 W.L. 77761, Martin, J. (1988).

The statutory requirements for sending notice under §3104(d) represent a strict jurisdictional requirement. Greenly v. Davis, Del. Super., 486 A.2d 669 (1984). The requirements are that the plaintiff is to serve process with the Secretary of State. After a return of process is filed, the plaintiff has seven (7) days to send notification by registered mail to the non-resident defendant. In addition, the plaintiff is to amend the complaint pursuant to Rule 4(h) which proves to the Court that the defendant was served with process.

The second jurisdictional requirement intentionally not met by the Respondent's attorney was notification of defendant by registered mail. Any type of actual notification does not satisfy the statutory notice requirement. Swift v. Leasure, Del. Super., 258 A.2d 428 (1971).

In the present case, Respondent's attorney knew what he was doing when he refused to follow the statutory procedure of sending notification to the non-resident defendant by registered mail at Spanagel's correct address. Casson v. Matt Slap Subaru, Inc., Del. Super. 1988 W.L. 77761, Martin, J. (1988).

A second course is mandated by statute in the event of non-receipt of the notice. In this situation it is assumed that the Respondent's attorney has already complied with the first mailing required by §3112(b), i.e. the mailing which follows the return of service on the Secretary of State. Once the plaintiff becomes aware that his initial notice has not been received he may elect to prove non-receipt by filing a §3112(e) affidavit, but subjects himself to the alternate procedure set forth in §3112(b) which requires the sending of a notice to the

defendant. Respondent's attorney willfully ignored even this rule.

"Not later than seven days following ... the filing with the Court of the proof of the non-receipt of notice provided for in subsection (e) of this section..."

This seven day period is statutory and not subject to enlargement by rule of Court. Thus, in a non-receipt situation the plaintiff is actually required to make two mailings to the defendant in order to effectuate his jurisdictional notice. Purnell v. Dodman, Del. Super., 297 A.2d 391, 395 (1972).

The Delaware Supreme Court has specifically held that where a statute required notice to be sent to a protected party's address, the party sending the notice would lose its rights under the statute, if the notice is sent to the wrong address. Friendly Finance Corp. v. Bovee, Del. Supr., 702 A.2d 1225, 1228 (1997). This same Court has in essence reversed this just ruling, by allowing Mr. Ferry to commit fraudulent conduct upon the Court, in order to obtain a default judgment.

Mr. Ferry thought and still thinks he is above the law, and need not follow fundamental Court rules. Even though no substitution of party order was sign after the death of his client, the Court permitted him to continue to represent a non entity. In effect, Mr. Ferry had no standing to be representing or suing anyone and engaged in a conspiracy when he entered his appearance February 23, 1999, Docket 40, almost one year after the death of his client's ward. Unfortunately, two Courts have already sanctioned his conduct.

In the present case, the alternate ways in which Mr. Ferry served defendant is legally irrelevant in complying with the protection the defendants' constitutional rights to due process of law pursuant to Delaware's statute. The statutory notice is required to be sent by registered mail within seven days of the return of service by the Sheriff to Register in Chancery. In the case at bar, respondent's attorney intentionally and willfully sent the Complaint to the wrong address. None of the notices alleged to have been sent by Respondent's attorney were done in the manner prescribed by statute or during the time permitted under the statute. This admission came after the death of Robert J. Spanagel and after the Spanagels had lost their worldly possessions at the hands of an unethical and calculating attorney.

Respondent's attorney asserted that he sent the notice by law in an envelope, his letter dated August 19, 1995 to the Spanagels. That envelope only had $.32 postage, which would have been insufficient to include the notice to a non-resident, the complaint and summons as well as the notice of lis pendens. This notice preceded the sheriff's return of service, so it could not have had the notice to a non-resident, and it was not within the time frame permitted by statute.

This same devious attorney represented that he had sent notice to an attorney who had represented Appellant Spanagel in another lawsuit. This same unethical attorney made no attempt to demonstrate that attorney had the authority to accept legal process on behalf of the defendants. Contrary to this, plaintiff had stated that the attorney directed plaintiff's counsel to fax the notice directly to the defendants. However, defendants do not have a fax machine on which to receive the

complaint. Regardless, this notice procedure was not statutorily permitted by manner nor time.

About six months after the above-mentioned faxed notice, Mr. Ferry had a courier hand delivery a copy of the complaint to the Spanagel's Cambridge, Maryland address. This occurred even though this attempt was long after the time period prescribed by statute, and is not a listed statutory means for service. Consequently, the lower court never had jurisdiction over the Petitioners.

The lower court also erred when it entered an order to sell Spanagel's real estate before the Spanagels had presented all their evidence at the inquisition hearing. After the first hearing March 26, 1999 where the court only took testimony from Respondent only, the lower court also erred when it entered an order to sell Spanagel's real estate. Testimony from Robert J. Spanagel only was heard for the first time six months later, December 20, 1999.

The Spanagels were set up for failure when, in addition to willful misrepresentations by Respondent's counsel, crucial records and documents are missing from the Court's file. A note , which was made part of the record from the Vice Chancellor's secretary sums it all up-- "do not docket". A conscious decision was made by the Court to not docket the Spanagel's evidence and responses. This decision, along with the fraud on the Court, costs the Spanagels everything dear to them.

Unlike previous cases where no just determination could be made without a new trial because of missing documents, the Court in the case at bar ignored the fundamental concept that

you must have a full and complete record before any decision is reached regarding substantive rights. See Wayne Watson v. State of Delaware, 781 A.2d 596 (Del. Supr. 1999); J. Barclay Brothers v. William Lawton , 40 A.935 (Del. Super. 1893); Byrnia v. Town of Cromwell Bd., 243 F.3d 93 (2001).

Fraud on the Court, incomplete record, and the incompetency of Petitioners at the time of the filing of the default judgment made it impossible for Petitioners to rightfully defend false accusations, and protect their constitutional right to a fair trial. In essence , the Spanagel were treated like dogs , with no humanly rights recognized on their behalf by anyone, including the Court. The Court 's condoning of Ferry's wrongful conduct makes the Court just as responsible for the Spanagel's plight, if not more so , because of the Court's unique position . The effect was having the trial Court conspire with Ferry to destroy the Spanagels' name . The grant of the default judgment on the part of the Court was a calculated move to cover up Ferry's wilful actions. This calculated move was a violation of the Canon of Judicial Ethics No. 3 which governs judges. Canon 3 requires a judge to be "faithful to the law and maintain professional competence". Joseph B. P. v. Kathleen M. P., 469 A2d 800 (1983); Walsh v. Hotel Corporation of America, 231 A.2d 458 (1967); Cheryl Taylor v. William Taylor, 1995 Del. Fam. Ct. Lexis 45 (1995). See T. Bradford Zimlerski v. State Farm Automobile Ins. Co., 1987 Del. Super. LEXIS 1291 (1987) (Ferry was closely involved with a Judge in this case, as well).

Ferry's criminal like conduct, in stealing the Spanagels'wordly possessions with false accusations, should have caused the Court to immediately find that Ferry had no right to pursue any case against the Spanagels . See However, just the opposite was held--- the Spanagels had no rights .

All these facts lead to one conclusion. The Court of Chancery and Delaware Supreme Court turned their backs to fundamental rule violations and fraudulent conduct, when they permitted a default judgment to stand, and likewise turned their backs on justice for the Spanagels. The U.S. Supreme Court is the Spanagels' only hope for justice. Mr. Spanagel's spirit will not rest until his wife's good name and his good name are restored and cleared.

CONCLUSION

In our judicial system there is no more fundamental error than elevating form over substance as a means of denying a party access to the courts. That is what has happened in this case. The trial court granted a default judgment and the Delaware Supreme Court affirmed, because false statements were made by respondent's attorney that personal service had been made on Petitioners according to the Chancery Court rules. Yet instead of adhering to the letter and spirit of service rules, the courts below refused to address – or even acknowledge - the merits of the Petitioners' claims to that they were not served. Such failure is antithetical to the very notion of the grant of discretion to the lower courts. This Court should grant Petitioners' writ and redress this abuse of discretion and fundamental court error.

Wherefore, the Petitioners respectfully request that a writ of certiorari issue to the Supreme Court for the state of Delaware for the purpose of bringing before this Court for full briefing and review the order dismissing the Petitioner's appeal.

Respectfully submitted,

Rose Marie S. Spanagel
5132 Paw Paw Point
Cambridge, MD 21613
(410) 228-9009

No. _____

In The Supreme Court of the United States

ROSE MARIE S. SPANAGEL, individually and as personal representative of the Estate of Robert J. Spanagel,

Petitioners,

v.

SUPPORTIVE CARE SERVICE, INC.,

Respondent.

On Petition for Writ of Certiorari to the Delaware Supreme Court

APPENDIX

Rose Marie S. Spanagel
5132 Paw Paw Point
Cambridge, MD 21613
(410) 228-9009

Pro se

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOHN H. WILLIAMS, JR., ADMINISTRATOR WITH THE WILL ANNEXED OF THE ESTATE OF ALINE G. BRUGMANN	)
Plaintiff,	) C.A. No. No.14488-NC
v.	)
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)
Defendants.	)

AFFIDAVIT

STATE OF DELAWARE :

SS.

NEW CASTLE COUNTY :

DAVID J. FERRY, JR., ESQUIRE, being duly sworn, did depose and state as follows:

1. He is counsel to the plaintiff in this action.

2. The facts set forth in his letter to Vice Chancellor

Jack B. Jacobs dated December 21, 1995, a copy of which is attached as Exhibit "C" to defendants' Motion for Relief from Judgments and incorporated herein by reference, are true and correct.

3. On December 21, 1995, the original of that letter along with all attachments thereto was delivered to Vice Chancellor Jacobs by hand, and a copy was filed with the Register in Chancery.

/s/
DAVID J. FERRY, JR.

SWORN TO AND SUBSCRIBED before me this 16th day of September, 1999.

/s/
Notary Public

FERRY, JOSEPH & FINK, P.A.
ATTORNEYS AT LAW
824 MARKET STREET
SUITE 904
PO BOX 1351
WILMINGTON DELAWARE 19899

(302) 575-1555

David J. Ferry, Jr.
Michael B. Joseph
Kenneth E. Fink
Theordore J. Tacconelli
John D. Mattey

TELEFAX
(302) 575-1714

December 21, 1995

VIA HAND DELIVERY

The Honorable Jack B. Jacobs
Court of Chancery
Daniel L. Herrmann Courthouse
1020 N. King Street
Wilmington, DE 19801

RE: Supportive Care Services, Inc. v. Spanagel
C.A. No. 14488

Dear Vice Chancellor Jacobs:

The Court's Order of November 15, 1995 directed the defendants to answer the Complaint or show cause as to why they have not answered the Complaint by December 15, 1995. The defendants have not been in contact with me regarding this matter, but I learned from checking the Court file that a letter was sent to Your Honor by the defendants on or about

December 14, 1995 indicating that it was impossible for them to answer the Complaint because they did not have it in their possession.

I am writing to renew my request for a default judgment in this matter. I respectfully submit that the defendants are not being truthful with the Court and are clearly engaging in dilatory tactics.

The defendants' letter to Your Honor dated December 14, 1995 indicates that they do not have a copy of the Complaint. The following is a summary of the efforts and notice provided to the defendants regarding the Complaint:

1. This suit was filed on August 18, 1995 and seeks an accounting and an imposition of a constructive trust on assets wrongfully appropriated from Aline Brugmann. At the time, the defendants were dealing with a real estate agent at Prudential Preferred Properties in connection with the plans to sell the former residence of Aline Brugmann and they were represented in a related Superior Court action by Darrell Baker, Esquire. Settlement of the real estate was scheduled to be held on August 23, 1995, and a lis pendens was filed in the office of the Recorder of Deeds.

2. A copy of the Complaint was sent by me to Mr. and Mrs. Spanagel on August 19, 1995 by regular first class mail. A copy of my letter to the defendants is attached as Exhibit "A". This letter was not returned to my office and, therefore, is presumed to have been received by the defendants.

3. I contacted the real estate agent by phone on August 18, 1995 to inform him of the filing of the law suit and I personally delivered to his office a copy of the letter to the Spanagels on August 19, 1995.

4. On August 22, 1995, I was contacted by Darrell Baker as counsel for the Spanagels. At his request, I provided him with a copy of the Complaint and confirmed arrangements to allow the real estate settlement to proceed with funds to be held in escrow pursuant to an escrow agreement. I also confirmed that the defendants were going to provide accounting information that they had been ordered to provide by a prior Order of the Court of Chancery. A copy of my letter to Mr. Baker is attached as Exhibit "B".

5. Although they had indicated they would appear at settlement, the Spanagels failed to appear at settlement on August 23, 1995. I am informed that they refused to appear at settlement because of the pending Chancery Court suit. A copy of my letter to Mr. Baker dated August 23, 1995 confirming that the Spanagels did not appear at settlement and did not provide accounting documents is attached as Exhibit "C".

6. Darrell Baker requested my secretary to forward a copy of the Complaint directly to the Spanagels by fax transmission on August 24, 1995. The Complaint was faxed to the Spanagels on that date. A copy of the fax transmission sheet is attached hereto as Exhibit "D". A copy of the confirmation of the receipt of the fax is attached hereto as Exhibit "E".

7. The Spanagels were informed of the filing of lis pendens declaration by my letter of August 25, 1995. A copy of that letter is attached hereto as Exhibit "F'. This letter was not returned by the post office.

8. Registered mail letters were sent to Mr. and Mrs. Spanagel on September 15, 1995 along with a copy of the Complaint and Summons as required by 10 Del.C. § 3104. Copies of the letter to Mr. and Mrs. Spanagel are attached hereto as Exhibit "G". The Spanagels did not claim the registered letters that were sent to them. Copies of the envelopes returned to my office as "Unclaimed" are attached hereto as Exhibit "H".

9. A Motion for Default Judgment was filed and copies were sent directly to the Spanagels by first class mail on October 23, 1995. This mailing was also not returned to my office and, therefore, is presumed to have been received by the defendants.

10. My letter to Your Honor dated November 6, 1995 forwarding a copy of the Motion for Default Judgment was copied to the defendants. This letter also was not returned to my office and is, therefore, presumed to have been received.

11. My letter of November 15, 1995 to Your Honor forwarding a form of an Order to Show Cause was also copied to the defendants. This letter was not returned to my office and is, therefore, presumed to have been received.

12. The defendants' letter to Your Honor dated December 14, 1995 acknowledges that the Order to Show

Cause was received by them. That Order clearly indicates that defendants must show cause as to why they have failed to answer the Complaint and/or file an answer to the Complaint by December 15, 1995 to avoid default judgment.

In addition to the above, this Court's Order of July 11, 1995 directed Mr. Spanagel to provide a written explanation of his management of Aline Brugmann's assets to her guardian. The Spanagels have also ignored that Order and have failed to file any accounting information despite repeated requests for same.

The Spanagels' letter to Your Honor dated December 14, 1995 indicates that 5132 Paw Paw Lane, Cambridge, Maryland 21613 is an incorrect address. However, the real estate contract that they signed on June 27, 1995 to sell the former home of Mrs. Brugmann indicates that their address for purposes of any notices if 5132 Paw Paw Point, Cambridge, Maryland 21613.

Despite any health problems that the defendants may have, they have been given an extensive amount of time to respond to the Complaint and to respond to the prior Court Order of July 11, 1995. They have been represented by counsel and they clearly have seen a copy of the Complaint despite their representations to the contrary in the letter of December 14, 1995. The December 14, 1995 letter is obviously a delay tactic. Plaintiff requests that default judgment be entered and that the matter be scheduled for a hearing to determine the appropriate relief and damages due to the plaintiff.

If the Court has any questions, I would be pleased to answer them.

Respectfully,

DAVID J. FERRY, JR.

DJFjr/jbd
Enclosures

Cc: Nicholas R. Bischoff, Esquire
Thomas J. Pomatko, Esquire
Darrell J. Baker, Esquire
Mr. and Mrs. Robert J. Spanagel
Register in Chancery

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROSE MARIE SPANAGEL, individually and as personal representative of the estate of Robert J. Spanagel, deceased	§	
Defendants Below, Appellants,	§	No. 523, 2000
vs.	§	Court Below – Court of Chancery of the State of Delaware, in and for New Castle County C.A. No. 14488-NC
JOHN H. WILLIAMS, JR., administrator with the will annexed of the estate of Aline G. Brugmann, deceased, Plaintiff Below, Appellee	§	

APPELLEE'S ANSWERING BRIEF

FERRY & JOSEPH, P.A.
DAVID J. FERRY, JR.
RICK S. MILLER
824 Market Street, Suite 904
P.O. Box 1351
Wilmington, DE 19899
(302) 575-1555
Attorneys for the Plaintiff Below,
Appellee

Dated: August 13, 2001

CERTIFICATE OF SERVICE

I, Rick S. Miller, Esquire, hereby certify that on this 13th day of August, 2001, I caused two (2) copies of the foregoing Appellee's Answering Brief to be served, via first class mail, upon the following:

Caroline P. Ayres, Esquire
503 West Ninth Street
P.O. Box 85
Wilmington, DE 19899

Rick S. Miller, Esquire
(Bar I.D. No. #3418)

MANDATE SUPREME COURT OF THE STATE OF DELAWARE

TO: Court of Chancery of the State of Delaware in and for New Castle County:

GREETINGS:

WHEREAS, in the case of:

JOHN H. WILLIAMS, JR., ADMINISTRATOR WITH THE WILL ANNEXED OF THE ESTATE OF ALINE G. BRUGMANN

v.

ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL

C.A. No. 14488

certain judgments or orders were entered on the 4th day of March, 1996, the 9th day of April 1999, the 27th day of April 1999, the 21st day of September 1999, the 26th day of July 2000, the 14th day of September 2000, the 2nd day of October 2000, and the 12th day of October 2000, to which reference is hereby made; and WHEREAS, by appropriate proceedings the judgments or orders were duly appealed to this Court, and after consideration have been finally determined, as appears from the

Orders dated November 7, 2001 and December 7, 2001, certified copies of which are attached hereto;

ON CONSIDERATION WHEREOF IT IS ORDERED AND ADJUDGED that the orders or judgments and are hereby affirmed.

Audrey F. Bacino
Assistant Clerk of the Supreme

Issued: December 10, 2001
Supreme Court No. 532, 2000

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROSE MARIE SPANAGEL, individually and as personal representative of the estate of Robert J. Spanagel,	§	
Defendants Below, Appellants,	§	No. 523, 2000
v.	§	Court Below – Court of Chancery of the State of Delaware, in and for New Castle County C.A. No. 14488-NC
JOHN H. WILLIAMS, JR., administrator with the will annexed of the estate of Aline G. Brugmann, deceased,	§	
Plaintiff Below, Appellee	§	

Submitted: November 26 2001

Decided: December 7, 2001

Before VEASEY Chief Justice, WALSH, HOLLAND, BERGER and STEELE, Justices (constituting the Court en Banc).

This 6th day of December 2001, the Court having carefully considered the appellant's "Motion for Rehearing en

Banc" of the order issued by this Court on November 7, 2001, and it appearing that same should be denied;

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOHN H. WILLIAMS, JR., ADMINISTRATOR WITH THE WILL ANNEXED OF THE ESTATE OF ALINE G. BRUGMANN	)	
	)	C.A. No. No.14488-NC
Plaintiff,	)	
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

ORDER

AND NOW, to wit, this 2nd day of October, 2000, for the reasons set forth in this Court's Memorandum Opinion dated September 14, 2000 in this matter,

IT IS HEREBY ORDERED as follows:

1. A surcharge is hereby imposed, and judgment is hereby entered against the defendants, jointly and severally, in favor of the plaintiff, in the principal amount of $42,033.27

($36,033.27 for rent and $6,000.00 for other unaccounted for funds). Prejudgment and post-judgment interest is awarded on this sum at the legal rate.

2. The plaintiff's request for the taxation of its counsel fees against defendant Robert J. Spanagel's share of the estate is denied. The plaintiff's counsel fees and litigation expenses shall be paid from the estate in such amount as the Court approves upon application.

3. The defendants shall pay the plaintiff's Court costs.

4. The proceeds of the sale of the decedent's real estate shall be used to pay estate expenses, including the plaintiff's aforementioned counsel fees and litigation expenses, with the balance to be distributed to the beneficiaries.

/s/

Vice Chancellor Jack B. Jacobs

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT SPANAGEL AND ROSE MARIE SPANAGEL	§	
	§	No. 532, 2000

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT SPANAGEL AND ROSE MARIE SPANAGEL	§	
	§	No. 532, 2000
Defendants Below Appellants,	§	
	§	Court Below – Court of
v.	§	Chancery of the State of
	§	Delaware, in and for New
JOHN H. WILLIAMS, JR.,	§	Castle County
administrator with the will	§	C.A. No. 14488-NC
annexed of the estate of	§	
Aline G. Brugmann,	§	
deceased,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted; October 10, 2001

Decided: November 7, 2001

Before VEASEY, Chief Justice, WALSH and HOLLAND, Justices.

ORDER

This 7th day of November 2001, it appears to the Court that:

1) This is an appeal from a final judgment entered by the Court of Chancery. These proceedings were filed on August 18, 1995 by Supportive Care Services, Inc., as guardian of the property of Aline G. Brugmann ("Mrs. Brugmann"). Mrs. Brugmann died on March 12, 1996. Mrs. Brugmann's death resulted in the substitution of John H. Williams, Jr., the administrator of Mrs. Brugmann's estate, as the party plaintiff ("plaintiff').

2) The complaint asked for accounting from Robert J. and Rose Marie Spanagel ("defendants") and for the imposition of a constructive trust against certain real property that Mrs. Brugmann had transferred to the defendants.

3) A default judgment was entered against the defendants by the Court of Chancery on March 4, 1996. The defendants moved to set aside the default judgment on May 1, 1996. That motion was denied by an Order dated May 14, 1996.

4) The Court of Chancery held an inquisition hearing on March 27, 1999 to determine the damages and other relief due to the plaintiff. The defendants appeared at the March hearing. The Court of Chancery heard testimony from the plaintiff. It then continued the hearing to a later date to enable the parties to develop a pretrial order.

5) The Court of Chancery also asked the parties to submit letter memoranda to address the effect of the default judgment that had been entered against the defendants with regard to the issues pending in the inquisition. The plaintiff

submitted a memorandum with the Court of Chancery. The defendants did not submit their own memorandum.

6) On April 9, 1999, the Court of Chancery issued an Order granting the specific equitable relief prayed for in the complaint a constructive trust against the real property known as 3403 South Rockfield Drive, Wilmington, Delaware. In the April 9, 1999 Order, the Court of Chancery ordered the defendants to execute a corrective deed transferring the property to the plaintiff.

7) The defendants did not comply with the Court of Chancery's April 9, 1999 Order. The plaintiffs filed a motion for performance by substitute. The defendants did not oppose the motion. The motion was granted by the Court of Chancery on April 27, 1999.

8) On September 13, 1999, the defendant filed another motion to vacate the default judgment. On September 21, 1999, the Court of Chancery again denied the motion.

9) The inquisition hearing reconvened on December 20, 1999. The defendants were afforded the opportunity to present their case. The Court of Chancery ordered post-trial briefing and further oral argument at the conclusion of the briefing.

10) The Court of Chancery issued its Memorandum Opinion on September 14, 2000. In its Opinion, the Court of Chancery granted most of the substantive relief sought by the plaintiff. A form of Order implementing the Memorandum Opinion was signed and entered. The defendants filed this appeal.

11) In this appeal, the appellants challenge the Court of Chancery's decision not to set aside the default judgment that was entered in 1996. We have concluded that the motion to set aside the default judgment was properly denied by the Court of Chancery, for the reasons stated in its September 21, 1999 Letter Opinion. We have also concluded that the final judgment entered by the Court of Chancery should be affirmed for the reasons stated in its September 14, 2000 Memorandum Opinion.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgments of the Court of Chancery are affirmed.

BY THE COURT:

"NOT SIGNED"

Justice

IN THE COURT OF CHANCERY OF THE STATE OF

DELAWARE
IN AND FOR NEW CASTLE COUNTY

JOHN H. WILLIAMS, JR., administrator with the will annexed of the estate of Aline G. Brugmann,	)	
Plaintiff,	)	
	)	C.A. No. 14488-NC
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

ORDER

AND NOW, to wit, this 21st day of September, 1999, upon consideration of Defendants' Motion for Relief from Judgment and Plaintiff's Response thereto,

IT IS HEREBY ORDERED:

1. The Motion is DENIED.

2. Unless specifically authorized to do so by the Court,

the defendants shall not file any further motions or other papers with the Court seeking to vacate or set aside this Court's Order of March 4, 1996, granting default judgment in favor of the plaintiff.

Violation of this Order shall be considered sanctionable conduct and may lead, without limitation, to an award of counsel fees to the plaintiff for the cost of responding thereto.

/s/

Vice Chancellor Jack B. Jacobs

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOHN H. WILLIAMS, JR., ADMINISTRATOR WITH THE WILL ANNEXED OF THE ESTATE OF ALINE G. BRUGMANN	)	
Plaintiff,	)	C.A. No. No.14488-NC
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

ORDER

AND NOW, TO-WIT, this 20th day of June, 2000, the Court having considered plaintiff's motion to cancel the lis pendens filed by the defendants in this action, and the Court having concluded that (1) plaintiff has provided sufficient security and (2) defendants have failed to show a probability that final judgment will be entered by this Court in their favor,

IT IS ORDERED as follows:

1. The Recorder of Deeds is hereby directed to cancel the lis pendens filed by the defendants against the property known as 3403 S. Rockfield Drive, Wilmington, DE.

2. Plaintiff may immediately file a copy of this Order with the Recorder of Deeds, with any filing costs to be paid by the defendants.

/s/

Vice Chancellor Jack B. Jacobs

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JOHN H. WILLIAMS, JR., ADMINISTRATOR WITH THE WILL ANNEXED OF THE ESTATE OF ALINE G. BRUGMANN,	)	
Plaintiff,	)	
	)	C.A. No. 14488-NC
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

ORDER

AND NOW, TO—WIT, this 27th day of April, 1999, the foreoing Motion for Performance by Substitute having been presented to and considered by the Court,

IT IS ORDERED AS FOLLOWS:

1. The motion for Order of Performance by Substitute is hereby granted.

2. The Court directs and authorizes Diane Kempski, Register in Chancery, to sign the deed and transfer tax affidavits prepared by plaintiff's counsel to transfer title to the real estate at 3403 S. Rockfield Drive, Wilmington, Delaware to the

plaintiff pursuant to the Court's Order of April 9, 1999.

/s/

Chancellor

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOHN H. WILLIAMS, JR., ADMINISTRATOR WITH THE WILL ANNEXED OF THE ESTATE OF ALINE G. BRUGMANN	)	
Plaintiff,	)	C.A. No. No.14488-NC
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

ORDER

AND NOW, TO-WIT, this 9th day of April, 1999, the Court having considered plaintiff's memorandum of law concerning the effect of the default judgment entered by this Court,

IT IS ORDERED that the Deed signed by Aline G. Brugmann on or about June 18, 1987, purporting to transfer the real property known as 3403 South Rockfield Drive,

Wilmington, Delaware, and recorded in the office of the Recorder of Deeds, in and for New Castle County, in Deed Record Book 588, Page 347, is hereby declared null and void. Robert J. Spanagel and Rose Marie Spanagel shall, within ten (10) days of the date of this Order, effectively reverse the June 18, 1987 Deed by filing a corrective deed with the office of the Recorder of Deeds, in and for New Castle County, which will re-vest title to the property in the name of Aline G. Brugmann.

/s/

Vice Chancellor

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SUPPORTIVE CARE SERVICES, INC., GUARDIAN OF ALINE G. BRUGMANN,	)	
Plaintiff,	)	
	)	C.A. No. 14488
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

AND NOW, TO-WIT, this ____ day of _____ , 1997, the Motion for Substitution having been presented to and considered by the Court,

IT IS ORDERED AS FOLLOWS:

1. The Motion for Substitution is hereby granted;

2. John H. Williams, Jr., Administrator with will annexed of the estate of Aline G. Brugmann is hereby substituted as plaintiff and the caption of the case shall hereafter be titled: "John H. Williams, Administrator with Will Annexed of the Estate of Aline G. Brugmann, Plaintiff, v. Robert Spanagel and Rose Marie Spanagel, Defendents."

"NOT SIGNED OR DATED"

Chancellor

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SUPPORTIVE CARE SERVICES, INC., GUARDIAN OF ALINE G. BRUGMANN,	)	
Plaintiff,	)	
	)	C.A. No. 14488
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

ORDER TO SHOW CAUSE

AND NOW, TO—WIT, this 4th day of March, 1996, the Court having considered the plaintiff's Motion for Default Judgment and in light of defendants' failure to file an Answer to the Complaint on or before January 19, 1996 as required by this Court's Order of December 22, 1995,

IT IS ORDERED as follows:

1. Default judgment is hereby entered in favor of the plaintiff and against the defendants, Robert J. Spanagel and Rose Marie Spanagel, jointly and severally.

2. An inquisition hearing shall be held for the

purpose of determining the appropriate relief and damages due to the plaintiff.

/s/

V.C. J.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SUPPORTIVE CARE SERVICES, INC., GUARDIAN OF ALINE G. BRUGMANN,	)	
Plaintiff,	)	C.A. No. 14488
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

ORDER TO SHOW CAUSE

AND NOW, TO—WIT, this 22 day of December, 1995, the Court having considered the defendant's correspondence dated December 14, 1995 and the response of Plaintiff's counsel dated December 21, 1995,

IT IS HEREBY ORDERED as follows:

1. The defendants shall show cause in writing to why they have failed to answer the plaintiff's Complaint and file an Answer to the Complaint on or before January 19, 1995 or judgment shall be entered by default in favor of the plaintiff.

2. A copy of this Order shall be sent by regular mail to the defendants at the address provided by the defendants,

Paw Paw Point, Rt. 4, Cambridge, Maryland 21613.

/s/

The Honorable Jack B. Jacobs

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SUPPORTIVE CARE SERVICES, INC., GUARDIAN OF ALINE G. BRUGMANN,	)	
Plaintiff,	)	
	)	C.A. No. 14488
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

ORDER TO SHOW CAUSE

AND NOW, TO-WIT, this 15th day of November, 1995, the plaintiff's Motion for Default Judgment having been presented to and considered by the Court,

IT IS HEREBY ORDERED as follows:

1. The defendants, Robert J. Spanagel and Rose Marie Spanagel shall show cause as to why they have failed to answer the plaintiff's Complaint and/or shall file an Answer to the Complaint on or before December 15, 1995 or judgment shall be entered by default in favor of the plaintiff.

2. A copy of this Order shall be sent by regular mail by the Register in Chancery to the defendants at their last

known address, 5132 Paw Paw Lane, Cambridge, Maryland 21613.

/s/

V.C. J.

Dated: